

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Brader-Araje *et al.*

Serial No.: 09/549,370

Filed: April 13, 2000

For: SYSTEMS, METHODS AND COMPUTER PROGRAM PRODUCTS THAT  
FACILITATE PARTICIPATION IN ONLINE AUCTIONS VIA AN INTERMEDIARY  
WEB SITE

Group Art Unit: 3625

Confirmation No.: 8285

Examiner: Matthew S. Gart

March 26, 2007

Mail Stop Appeal Brief – Patents

Commissioner for Patents

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Alexandria, VA 22313-1450

**CERTIFICATION OF TRANSMISSION**

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2007.



Erin C. Dutton

**TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION--37 C.F.R. § 41.37)**

1. Transmitted herewith is the APPEAL BRIEF for the above-identified application,  
pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed  
February 15, 2007.

2. This application is filed on behalf of

☐

a small entity.

3. Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:

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other than small entity

\$500.00

Appeal Brief fee due **\$500.00**

☒

This and any additional fee or refund may be charged to Deposit  
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**APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37**

Sir:

This *Appeal Brief* is filed pursuant to the *Notice of Appeal to the Board of Patent Appeals and Interferences* filed on February 15, 2007 in response to the *Final Office Action* ("Final Action") mailed December 13, 2006.

It is not believed that an extension of time and/or additional fee(s) are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned under 37 C.F.R. § 1.136(a). Any additional fees believed to be due may be charged to Deposit Account No. 50-0220.

**Real Party In Interest**

The real party in interest is assignee **Siebel Systems, Inc., San Mateo, California.**

**Related Appeals and Interferences**

Appellants are aware of no appeals or interferences that would be affected by the present appeal.

**Status of Claims**

Claims 1, 2 and 54-58 stand finally rejected. Claims 4-6 and 8-9 stand allowed. Claims 3, 7 and 10-53 have been cancelled. Appellants appeal the rejections of Claims 1, 2 and 54-58. The attached Appendix A presents the claims at issue on this appeal.

### **Status of Amendments**

Appellants filed a Response to Restriction Requirement on July 11, 2003. Appellants filed an Amendment on January 2, 2004, which was entered. Appellants filed an RCE application on July 2, 2004, along with a second Amendment on July 12, 2004, which was entered. After filing an appeal and receiving an Office Action in response thereto, Appellants filed a third Amendment on September 12, 2005, which was entered. Appellants filed a fourth Amendment on March 21, 2006, which was entered. Finally, Appellants filed a fifth Amendment on October 17, 2006, which was entered. Thus, all five Amendments filed by Appellants have been entered, and the claims stand as presented in Appellants' Amendment dated October 17, 2006.

The attached Appendix A presents the claims on appeal (Claims 1-2 and 54-58) as amended in Appellants' Amendment of October 17, 2006.

### **Summary of Claimed Subject Matter**

Independent Claim 1 is directed to methods for allowing users (e.g., users **30** of **Fig. 1**) to obtain information about, and participate in, auctions being conducted at a plurality of on-line auction sites (e.g., remote auction sites **50** of **Fig. 1**). A Web site of an intermediary (e.g., intermediary web site **10** of **Fig. 1**) maintains information about items being auctioned at a plurality of remotely located auction sites **50** that are in communication with a computer network (e.g., communications network/Internet **40** of **Fig. 1**). Auction information is displayable to users **30** accessing the intermediary Web site **10** over the network **40** via clients, such as Web browsers. (Specification, page 4, lines 17-29).

Auction information maintained by the intermediary Web site **10** is kept current or "fresh" by obtaining auction item data – at predetermined (or other) time intervals – that has changed since a previous time for auctions currently being conducted at the respective auction sites **50**. (Specification, page 18, line 17 – page 20, line 4). The intermediary Web site **10** includes an agent (e.g., agent **18** of **Fig. 1**), and each remote, on-line auction site **50** includes a data engine (e.g., data engine **56** of **Fig. 1**) that is configured to obtain data about each item currently being auctioned at the respective auction site **50** and to communicate with an agent **18**

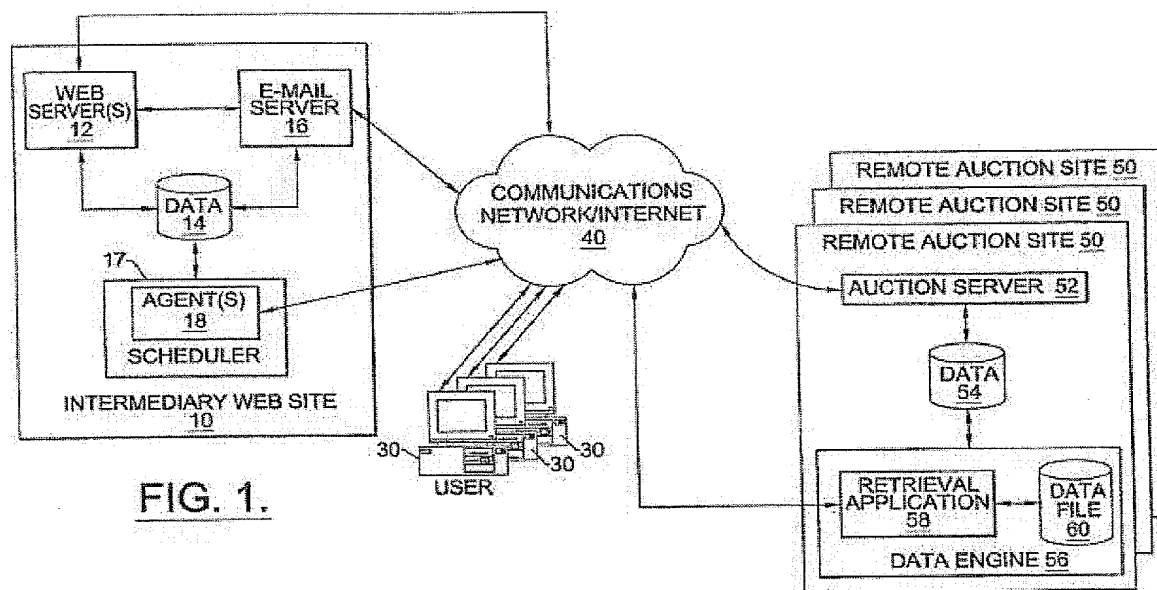
running at the intermediary Web site **10**. A TCP/IP connection is established between the agent **18** and each respective data engine **56** and to send an HTTP request from the agent **18** to each respective data engine **56**, via the TCP/IP connection, for updated auction item information. Keywords are extracted by the agent **18** from auction item data received by the intermediary Web site **10** and stored by the agent **18** in a format that is searchable by users **30** accessing the intermediary web site **10**. Each keyword extracted from auction item data may be associated with an item currently being auctioned at a respective one of the plurality of remote, on-line auction sites **50**. (Specification, page 4, line 30 through page 5, line 22 and page 21, line 28 – page 22, line 9).

Independent Claim 54 is directed to a method of updating information maintained at an intermediary web site (e.g., intermediary web site **10** of **Fig. 1**) on a computer network (e.g., network **40** of **Fig. 1**) about items being auctioned at a plurality of remotely located auction sites (e.g., remote auction sites **50** of **Fig. 1**) on the computer network **40**. This information is displayable to users (e.g., users **30** of **Fig. 1**) who access the intermediary web site **10**. Pursuant to these methods, data about items currently being auctioned at a respective plurality of the auction sites **50** is obtained at the intermediary web site **10** from a plurality of data engines (e.g., data engine **56** of **Fig. 1**). Keywords are extracted from the obtained auction item data and then stored. Each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites **50**, and the stored keywords are searchable by users **30** accessing the intermediary web site **10**. (Specification, page 4, line 30 through page 5, line 22 and page 21, line 28 – page 22, line 20).

Independent Claim 55 is likewise directed to a method of updating information maintained at an intermediary web site (e.g., intermediary web site **10** of **Fig. 1**) on a computer network (e.g., network **40** of **Fig. 1**) about items being auctioned at a plurality of remotely located auction sites (e.g., remote auction sites **50** of **Fig. 1**) on the computer network **40**. This information is displayable to users (e.g., users **30** of **Fig. 1**) who access the intermediary web site **10**. Pursuant to these methods, keywords are extracted from auction item data that has changed since a previous time for auctions currently being conducted at the respective auction sites. The keywords are stored at the intermediary web site **10**. (Specification, page 4, line 30 through page

5, line 22 and page 21, line 28 – page 22, line 9). Each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites 50. Moreover, the stored keywords are searchable by users 30 accessing the intermediary web site 10. (Specification, page 22, lines 10-20).

**Fig. 1** from Appellants' application is set forth below and illustrates an intermediary Web site 10 that allows users to search and retrieve information from multiple on-line auction sites 50. The intermediary Web site 10 communicates with both users 30 accessing the intermediary Web site 10 and with a plurality of remote, on-line auction sites 50 via the computer network 40. (Specification, page 15, line 28 - page 18, line 16).



### **Grounds of Rejection to be Reviewed on Appeal**

Claims 1-2 and 54-58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,047,210 to Srinivasan ("Srinivasan") in view of U.S. Patent No. 6,549,904 to Ortega.

## **Argument**

### **I. Introduction**

Claims 1-2 and 54-58 stand rejected as obvious under 35 U.S.C. § 103(a). A determination under Section 103 that an invention would have been obvious to someone of ordinary skill in the art is a conclusion of law based on fact. *Panduit Corp. v. Dennison Mfg. Co.* 810 F.2d 1593, 1 U.S.P.Q.2d 1593 (Fed. Cir. 1987), *cert. denied*, 107 S.Ct. 2187. After the involved facts are determined, the decision maker must then make the legal determination of whether the claimed invention as a whole would have been obvious to a person having ordinary skill in the art at the time the invention was unknown, and just before it was made. *Id.* at 1596. The United States Patent and Trademark Office (USPTO) has the initial burden under § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

To establish a *prima facie* case of obviousness, the prior art reference or references when combined must teach or suggest *all* the recitations of the claims, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. § 2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. § 2143.01. As emphasized by the Court of Appeals for the Federal Circuit, to support combining references, evidence of a suggestion, teaching, or motivation to combine must be clear and particular, and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999).

Furthermore, as stated by the Federal Circuit with regard to the selection and combination of references:

This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority. It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). Thus the Board must not only assure that the requisite findings are made, based on evidence of record, but must also

explain the reasoning by which the findings are deemed to support the agency's conclusion....

*In re Sang Su Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002).

Appellants respectfully submit that the pending claims are patentable over Srinivasan and Ortega because Srinivasan and Ortega, alone or in combination, fail to disclose or suggest all of the recitations of the pending claims and because the reasoning behind such combination has not been established with clear and particular evidence as required by the Federal Circuit. The patentability of the pending claims is discussed in detail hereinafter.

## **II. The Rejection of Claims 1-2 and 54 Under 35 U.S.C. § 103**

Claim 1 stands rejected under 35 U.S.C. § 103(a) over Srinivasan in view of Ortega.

Claim 1 recites:

1. A method of updating information maintained at an intermediary web site on a computer network about items being auctioned at a plurality of remotely located auction sites on the computer network, wherein the **information is displayable to users accessing the intermediary web site** via the computer network, the method comprising:

obtaining auction item data that has changed since a previous time for auctions currently being conducted at the respective auction sites, wherein each auction site includes a data engine that is configured to obtain data about each item currently being auctioned at the respective auction site, and wherein the intermediary web site includes an agent that is configured to communicate with and retrieve auction item data from each auction site data engine, comprising:

establishing a TCP/IP connection between the agent and each respective data engine; and

sending an HTTP request from the agent to each respective data engine via the TCP/IP connection to obtain auction item data that has changed since a previous time;

**extracting keywords from the obtained auction item data via the agent;** and

**storing the extracted keywords via the agent, wherein each stored keyword is associated with an item currently being auctioned** at a respective one of the plurality of remotely located auction sites, and wherein the **stored keywords are searchable by users accessing the intermediary web site.**

Appellants respectfully submit that the cited references fail to disclose or suggest at least each of the above-emphasized four (4) recitations of Claim 1. Appellants also respectfully

submit that a person of skill in the art would not have been motivated to combine the references as suggested in the Office Action. Accordingly, for each of the reasons discussed below, Appellants respectfully submit that the rejection of Claim 1 should be reversed.

A. **Neither Reference Discloses Making the Items Being Auctioned Displayable to "Users Accessing an Intermediary Web Site"**

Appellants first submit that neither of the cited references disclose or suggest making the information about the items being auctioned at the plurality of remotely located auction sites "**displayable to users accessing the intermediary web site**" as recited in Claim 1. The Final Action states that Srinivasan at Col. 3, line 65 to Col. 4, line 10 discloses making information about items being auctioned at a plurality of remote web sites displayable to users that access an intermediate web site. (Final Action, p. 3). Appellants respectfully disagree.

In particular, Srinivasan states that the scan site **18** (the identified "intermediary web site" of Srinivasan) may notify a buyer **using electronic mail** upon determining that a product that closely matches the desired product has been put up for auction. (Srinivasan at Col. 3, line 65 to Col. 4, line 18). This e-mail notification clearly does not involve displaying information to a user on an intermediary web site. Moreover, no other portion of Srinivasan discloses a capability for a user to **access** the scan site **18** to obtain a **display** of information about items being auctioned at the plurality of remotely located auction sites as recited in Claim 1. Ortega likewise uses electronic mail to notify a user regarding auctions of interest, and clearly does not disclose or suggest making the information about items being auctioned at the plurality of remotely located auction sites "displayable to users accessing the intermediary web site." Accordingly, as neither of the cited references disclose this recitation of Claim 1, the rejection of Claim 1 should be reversed.

In the Response to Arguments section of the Final Action, the Examiner argues that GUI screen **68** of Srinivasan displays the items being auctioned to users accessing the scan site **18**. (Final Action at 7). This statement misinterprets Srinivasan. A buyer enters GUI screen **68** by traversing several screens. In particular, after a buyer logs in, "buyer logged in screen **60**" appears, which includes a "wanted to buy menu **62**." (See Srinivasan at Col. 4, lines 59-66 and



Fig. 3E). Upon selection of the "wanted to buy menu 62" a "wanted to buy menu GUI screen 64" appears. (See Srinivasan at Col. 4, lines 66 through Col. 5, line 1 and Fig. 3F). The "wanted to buy menu GUI screen 64" includes a "view items button 68." (See Srinivasan at Col. 5, lines 1-2 and Fig. 3F).

As Srinivasan makes clear, the view items GUI screen 68 **displays information regarding the items that a buyer wants to purchase entered into scan site 18.** (Srinivasan at Col. 5, lines 3-16). As explained in Srinivasan, **the buyer uses GUI screen 68 to fill in information for each desired product.** (Srinivasan at Col. 5, lines 14-20). As such, it is clear that the GUI screen does not display information about items that are being auctioned at the remote auction sites, but instead shows a particular buyer's "wish list" of items that the buyer wants to purchase.

The Response to Arguments section also states that:

View items screen 68 includes the same information found in Auction site 22, and therefore makes the items being auctioned available to users accessing the Intermediary web site."

(Final Action at 7). No support or citation is provided, however, with respect to this statement. Appellants respectfully submit that nothing in Srinivasan supports this statement. Srinivasan simply does not state that information from Auction site 22 is displayed on view items screen 68 and, in fact, Srinivasan makes clear that this is not the case by explaining how the view items screen 68 is used by a buyer to input items that the buyer desires to purchase. Accordingly, for each of the above reasons, the Examiner has failed to rebut Appellants' showing that Srinivasan does not disclose or suggest making the information about items being auctioned at the plurality of remotely located auction sites "displayable to users accessing the intermediary web site" as recited in Claim 1.

#### B. Extracting Keywords From Obtained Data Via an Agent

Claim 1 further recites "extracting keywords from the obtained auction item data via the agent." The Final Action cites to Fig. 1 of Ortega as disclosing this recitation of Claim 1. (Final Action at 5). However, what Ortega discloses is that users may use keywords to identify items of interest so that the notification system can determine which auctions may be of interest to

particular users. (*See, e.g.*, Ortega at Col. 3, line 64 through Col. 4, line 25). Ortega thus does not disclose "extracting keywords from the obtained auction item data", as the keywords of Ortega are instead entered into a web page containing a users request. Likewise, Ortega does not disclose that the keywords are extracted "via [an] agent" that is "configured to communicate with and retrieve auction item data from each auction site data engine" as recited in Claim 1. In fact, the Final Action does not even attempt to argue that such an agent is used to extract the keywords. Accordingly, the rejection of Claim 1 should also be reversed for each of these additional reasons.

In the Response to Arguments section of the Final Action, the Examiner argues that "Ortega was cited to show extracting keywords from the obtained item data (Ortega: Fig. 1), not extracting keywords from obtained auction item data." (Final Action at 8). However, in Ortega the keywords are not "extracted" from any type of "item data", but instead are entered by a user. Likewise, the Final Action does not even attempt to explain how one of skill in the art could have modified the method of Srinivasan based on keyword entry in the method of Ortega to arrive at the method of Claim 1, let alone why they would have been motivated to make any such alleged change. Accordingly, the rejection of Claim 1 should also be reversed for this reason.

### C. Storing the Extracted Keywords

Claim 1 also recites "storing the extracted keywords via the agent, wherein each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites." The Final Action cites to Col. 4, line 58 through Col. 5, line 18 of Ortega as disclosing this recitation of Claim 1. (Final Action at 5). However, what the cited portion of Ortega discusses is having the users input keywords of items that are of interest. As such, each keyword is not "associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites" as recited in Claim 1. Accordingly, the rejection of Claim 1 should be reversed for this additional reason.

In the Response to Arguments section of the Final Action, the Examiner argues that the rejections rely on the combination of Srinivasan and Ortega to teach "storing the extracted keywords via the agent, wherein each stored keyword is associated with an item currently being

auctioned at a respective one of the plurality of remotely located auction sites." (Final Action at 8). However, Appellants respectfully submit that neither of the cited references disclose that "each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites." In particular, Srinivasan does not disclose keywords at all, and the keywords of Ortega are user input keywords that identify items the user wishes to purchase as opposed to being information regarding items that are currently being auctioned at respective remote auction sites. Accordingly, the Examiner's argument fails to rebut Appellants' showing that the combination of references fails to disclose the "storing keywords" recitation of Claim 1.

D. Keywords Searchable by Users Accessing the Intermediary Web Site

Claim 1 also recites that "the stored keywords are searchable by users accessing the intermediary web site." The Final Action cites to Col. 4, line 58 through Col. 5, line 18 of Ortega as disclosing this recitation of Claim 1. However, Appellants respectfully submit that the cited portion of Ortega contains no such disclosure. In fact, in Ortega, the keywords are entered by the user onto a web page for transmission to the notification system. (Ortega at Col. 5, lines 2-5). The keywords are not "searchable" by the user as recited in Claim 1 and, as noted above, the keywords are not extracted from "obtained auction item data" as is recited in another portion of Claim 1. The failure of the cited references to disclose these recitations of Claim 1 provide another basis for reversal of the rejection of Claim 1.

In the Response to Arguments section of the Final Action, the Examiner argues that Fig. 2 of Ortega shows that a search is performed on the keywords "Barbie" and "1960." (Final Action at 9). However, what the recitation of Claim 1 states is that "the stored keywords are searchable by users accessing the intermediary web site." The Final Action does not even attempt to explain how the actual recitation of Claim 1 is disclosed by Ortega. In addition, in Ortega it is not the keywords that are being searched. Instead, keywords are being used to search an auction database. Accordingly, this argument in the Final Action likewise fails for each of the above-stated reasons.

E. Summary

In order to make a *prima facie* rejection under 35 U.S.C. § 103, it is necessary to show that each of the recitations of the claim are disclosed in the cited prior art references, and that a skilled artisan would have been motivated to combine the prior art teachings to arrive at the claimed invention. As discussed above, the cited references fail to disclose or suggest at least four (4) different recitations of Claim 1, and hence the rejection of Claim 1 under 35 U.S.C. § 103 should be withdrawn for at least these reasons. Appellants likewise respectfully submit that the Final Action does not even attempt to make a *prima facie* showing as to why a person of skill in the art would allegedly have been motivated to combine the cited references in the manner suggested in the Final Action. Accordingly, the rejection of Claim 1 should be reversed for each of the above reasons.

Claim 2 likewise stands rejected under 35 U.S.C. § 103(a) over Srinivasan in view of Ortega. Claim 2 depends from Claim 1 and hence Appellants respectfully submit that the rejection of Claim 2 should be withdrawn for at least the reasons that the rejection of Claim 1 should be withdrawn.

Independent Claim 54 stands rejected for the same reasons that Claim 1 is rejected. Claim 54 contains each of the four (4) recitations which Appellants show above are not disclosed or suggested in the cited references. Accordingly, the rejection of Claim 54 should be withdrawn for at least the reasons that the rejection of Claim 1 should be reversed.

Independent Claim 55 stands rejected for the same reasons that Claim 1 is rejected. Claim 55 contains recitations very similar to each of the four (4) recitations which Appellants show above are not disclosed or suggested in the cited references. Accordingly, the rejection of Claim 55 should be withdrawn for at least the reasons that the rejection of Claim 1 should be reversed.

Claims 56-58 likewise stands rejected under 35 U.S.C. § 103(a) over Srinivasan in view of Ortega. Claims 56-58 each depend from Claim 55 and hence Appellants respectfully submit that the rejection of Claims 56-58 should be reversed for at least the reasons that the rejection of Claim 55 should be reversed.

### III. Conclusion

In light of the above discussion, Appellants submit that each of the pending claims is patentable over the cited references and, therefore, request reversal of the rejections of Claims 1, 2, and 54-58.

Respectfully submitted,



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#### CERTIFICATION OF TRANSMISSION

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Erin C. Dutton

**CLAIMS APPENDIX**  
Pending Claims USSN 09/549,370  
Filed April 13, 2000

1. A method of updating information maintained at an intermediary web site on a computer network about items being auctioned at a plurality of remotely located auction sites on the computer network, wherein the information is displayable to users accessing the intermediary web site via the computer network, the method comprising:

obtaining auction item data that has changed since a previous time for auctions currently being conducted at the respective auction sites, wherein each auction site includes a data engine that is configured to obtain data about each item currently being auctioned at the respective auction site, and wherein the intermediary web site includes an agent that is configured to communicate with and retrieve auction item data from each auction site data engine, comprising:

establishing a TCP/IP connection between the agent and each respective data engine; and

sending an HTTP request from the agent to each respective data engine via the TCP/IP connection to obtain auction item data that has changed since a previous time; extracting keywords from the obtained auction item data via the agent; and

storing the extracted keywords via the agent, wherein each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites, and wherein the stored keywords are searchable by users accessing the intermediary web site.

2. The method according to Claim 1 wherein obtaining auction item data that has changed since a previous time is performed at predetermined time intervals.

54. A method of updating information maintained at an intermediary web site on a computer network about items being auctioned at a plurality of remotely located auction sites on the computer network, wherein the information is displayable to users accessing the intermediary web site, the method comprising:

obtaining at the intermediary web site, from a plurality of data engines that are configured to obtain data about items currently being auctioned at a respective plurality of the auction sites, auction item data that has changed since a previous time for auctions currently being conducted at the respective auction sites;

extracting keywords from the obtained auction item data; and

storing the extracted keywords, wherein each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites, and wherein the stored keywords are searchable by users accessing the intermediary web site.

55. A method of updating information maintained at an intermediary web site on a computer network about items being auctioned at a plurality of remotely located auction sites on the computer network, wherein the information is displayable to users accessing the intermediary web site, the method comprising:

extracting keywords from auction item data that has changed since a previous time for auctions currently being conducted at the respective auction sites; and

storing the extracted keywords at the intermediary web site, wherein each stored keyword is associated with an item currently being auctioned at a respective one of the plurality of remotely located auction sites, and wherein the stored keywords are searchable by users accessing the intermediary web site.

56. The method according to Claim 55, wherein each of the remotely located auction sites has an associated data engine that extracts the keywords from auction item data at the auction site.

57. The method according to Claim 55, wherein the intermediary web site includes an agent that is configured to communicate with and retrieve auction item data from each auction site data engine.

58. The method according to Claim 57, wherein the keywords are extracted and stored by the agent at the intermediary web site.

### EVIDENCE APPENDIX

No evidence is being submitted with this *Appeal Brief* pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132.



**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.